Supreme Court of the United States.

No. 118.—October Term, 1905.

Sofre L. Alexander, Appellant, vs. Seferino Crollott, Justice of the Peace, etc. } Appeal from the Supreme Court of the Territory of New Mexico.

[December 18, 1905.]

This is an appeal from a judgment of the Supreme Court quashing a writ of prohibition issued by that Court to the defendant Crollott, a Justice of the Peace of the County of Bernalillo, which commanded him to desist and refrain from any further proceedings in five several actions of forcible entry and detainer, instituted by one Cleland before said Justice and against Alexander and four other parties.

An appeal was taken from the order quashing the writ to this Court.

Mr. Justice Brown delivered the opinion of the Court.

Although a writ of prohibition will lie to an inferior Court, where it is acting manifestly beyond its jurisdiction, such writ will issue only where there is no other remedy. (*Smith* v. *Whitney*, 116 U. S. 167; *In re Cooper*, 143 U. S. 472, 495; *In re Rice*, 155 U. S. 403; *In re New York etc. Steamship Company*, 155 U. S. 531.)

By his answer Alexander claimed to be the owner of the property, and alleged a want of jurisdiction on the part of the Justice to determine the question of ownership in a proceeding for forcible entry and detainer. The Justice decided against him. Under such circumstances he should have taken an appeal to the District Court under Section 3368 of the New Mexican code, which provides that "An appeal shall be allowed to the District Court in all cases wherein judgment may be hereafter rendered in forcible entry and unlawful detainer, or both." No reason is apparent why this appeal was not taken.

The fact that the judgment may have been void will not prevent its reversal upon appeal, (*Capron* v. *Van Noorden*, 2 Cranch, 126; *Kempe's Lessee* v. *Kennedy*, 5 Cranch, 173; *Dred Scott* v. *Sandford*, 19 How. 393, 473, 518, 566; *M. C. & L. M. Ry. Co.* v. *Swan*, 111 U. S. 379, 382; *Mexican &c. R. R. Co.* v. *Davidson*, 157 U. S. 208; *Jordan* v. *Dennis*, 7 Met. 590; *Waters* v. *Randall*, 8 Met. 132; *Striker* v. *Mott*, 6 Wend. 465; *Langford* v. *Monteith*, 102 U. S. 145,) nor does the requirement of a bond obviate the necessity of an appeal. It is one of the ordinary incidents of litigation.

Affirmed.